possible "special relationship" would be in Illinois, application of the choice of law principles found in Section 173, comment (b), indicates that any right to indemnity must be determined by the local law of the state of conduct and injury. Injury was solely in Arizona, while negligent conduct occurred in a number of states. Negligence occurred in Illinois because that is where the faulty pins were designed, where UNARCO failed to change the number on the pins so that a new pin could be distinguished from an old one, and where UNARCO failed to institute any inquiries as to whether the new pins had in fact been installed. Negligence also occurred in Indiana as that is where the new pins were manufactured and where they were marked so that all pins, old and new, looked alike. Negligence occurred in California because that is where the old pin allegedly was not replaced by the new pin sent from Illinois.

And finally, negligence occurred in Arizona as that is where the decedent opened the door which crushed him because of the faulty pin. Negligence clearly occurred in four states while the "injury" referred to in comment (b) occurred only in Arizona.

Section 145, to which Section 173 refers, contains a number of factors to be considered in determining the proper law to apply. Accordingly, the considerations in Section 145(2) will be discussed according to the order in which they appear therein.

(a) The place where the injury occurred. The injury occurred in Arizona and it is absurd to contend that this accident was fortuitous. Thousands of SOUTHERN PACIFIC railroad cars pass through Arizona each year. Accidents involving various railroads have caused many personal injuries within Arizona and to contend that these accidents were all purely fortuitous because

trains move in interstate commerce is simply to ignore the many accidents which have occurred. This is not the case of an infrequent plane crash which just happened to occur in Arizona, involving citizens from many other states. Petitioners' reasoning would make any accident involving an interstate carrier a fortuitous event. Arizona has a right as well as an obligation to apply its laws when train accidents occur as frequently as they do within its borders, especially when its residents are injured and when its taxpayers are alleged to be tortfeasors. Arizona clearly has an interest in applying its laws to railroad accidents occurring in Arizona due to the alleged negligence of the SOUTHERN PACIFIC railroad.

(b) The place where the conduct causing injury occurred. Because negligent conduct occurred in Illinois, Indiana, California and Arizona, no state has a

primary contact under this consideration.

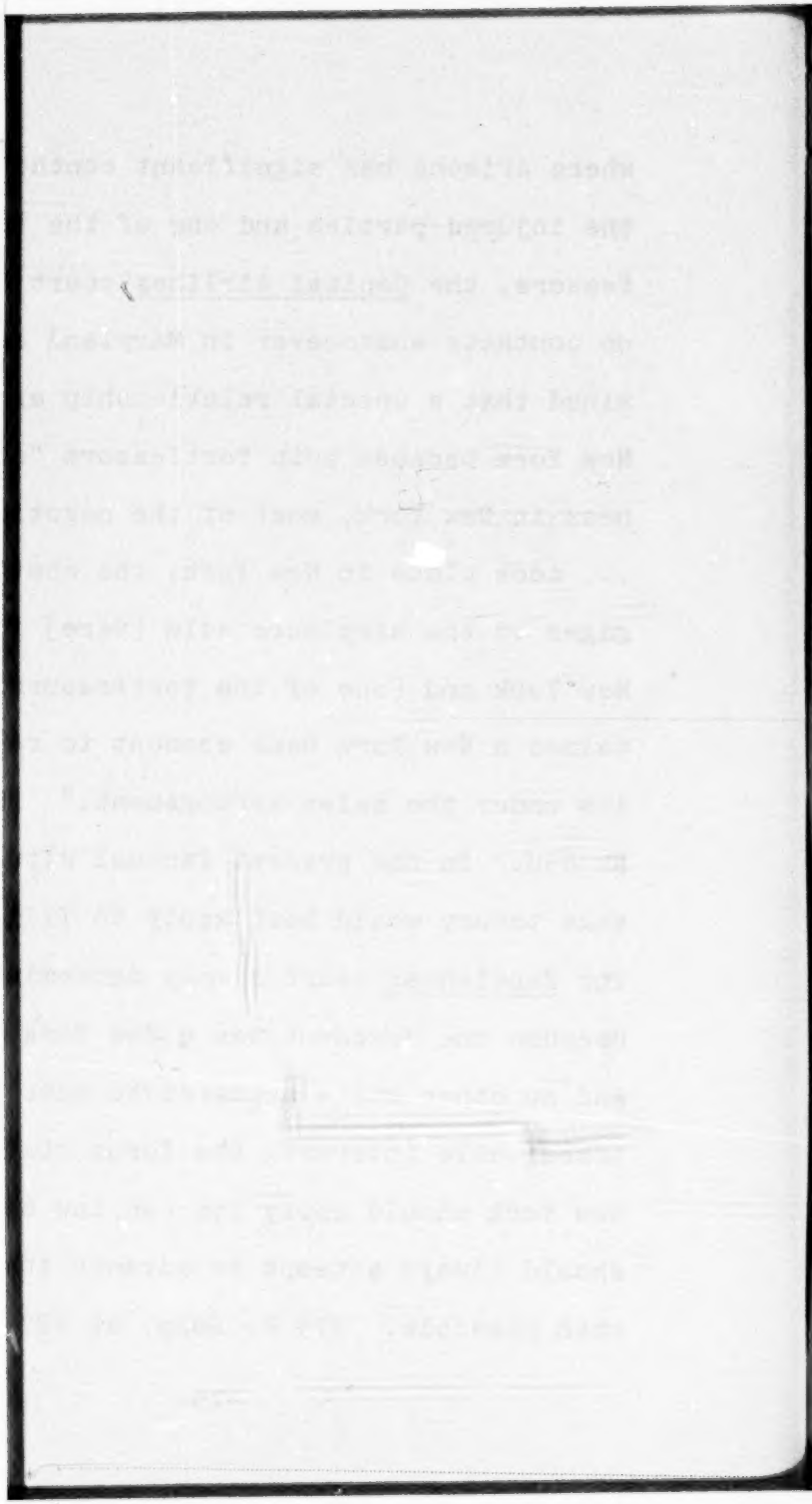
(c) The domicile, residence, nationality, place of incorporation and place of business of the parties. Neither party is incorporated, domiciled nor does its major business in the same state. Consequently, more emphasis must be placed on the locations of the injury and negligent conduct. Restatement (Second) of Conflicts, Section 173, comment (b) supra.

(d) The place where the relationship between the parties is centered. A special relationship does not occur simply because a single party orders and receives goods in one state. A relationship occurs, however, when two parties are involved in a transaction in one central location. The facts indicate that the only possible central location is in Illinois where UNARCO accepted the order, thereby entering into contractual relations with SOUTHERN PACIFIC. Before the

order was accepted, there was no relationship whatsoever. Similarly, UNARCO's relationship with its customers is centered where contractual relations are consummated, not where goods are subsequently shipped.

The Supreme Court of Arizona has indicated that the grouping of contacts is to be qualitative rather than quantitative. Schwartz v. Schwartz, 103 Ariz. 562, 447 P.2d 254 (1968). Surely both the qualitative and quantitative contacts in this case require that Arizona law be applied. The case law cited by petitioners involves different factual situations and does not compel a different result. Both Kantlehner v. United States, 279 F. Supp. 122 (E.D.N.Y. 1967); and Maryland v. Capital Airlines, Inc., 280 F. Supp. 648 (S.D.N.Y. 1964) involved airplanes which just happened to crash in Maryland after flying over a number of states. Contrary to the present factual situation

where Arizona has significant contacts with the injured parties and one of the tortfeasors, the Capital Airlines court found no contacts whatsoever in Maryland and determined that a special relationship existed in New York because both tortfeasors "did business in New York, most of the negotiations ... took place in New York, the chattel mortgages on the airplanes sold [were] filed in New York and [one of the tortfeasors] maintained a New York bank account to receive monies under the sales arrangement." 280 F. Supp. at 650. In the present factual situation, this theory would best apply to Illinois. The Kantlehner court simply determined that because the decedent was a New York resident and no other state appeared to have any conceivable interest, the forum state of New York should apply its own law because it should always attempt to advance its policies when possible. 279 F. Supp. at 127. This



theory would appear to require the choice of Arizona law.

CONCLUSION

After considering the qualitative contacts and the well established Arizona policy prohibiting indemnity between joint tort-feasors who commit negligent acts in Arizona, it is obvious which law must be applied. The parties are not domiciled nor do they do their principal business in the same state. Similarly, there is no special relationship between the parties in the two states in issue. Consequently, the only qualitative contacts are the place of conduct and the place of injury. Injury was solely in Arizona while conduct occurred in four states including Arizona. The principles of the Restatement clearly dictate that Arizona law must prevail. Accordingly, the petition for writ of certiorari should be denied not only because the Court lacks jurisdiction but

also because it is clear that the district court correctly applied the choice of law rules of Arizona.

Dated this 22 day of January, 1976.

BILBY, THOMPSON, SHOENHAIR & WARNOCK, P.C.

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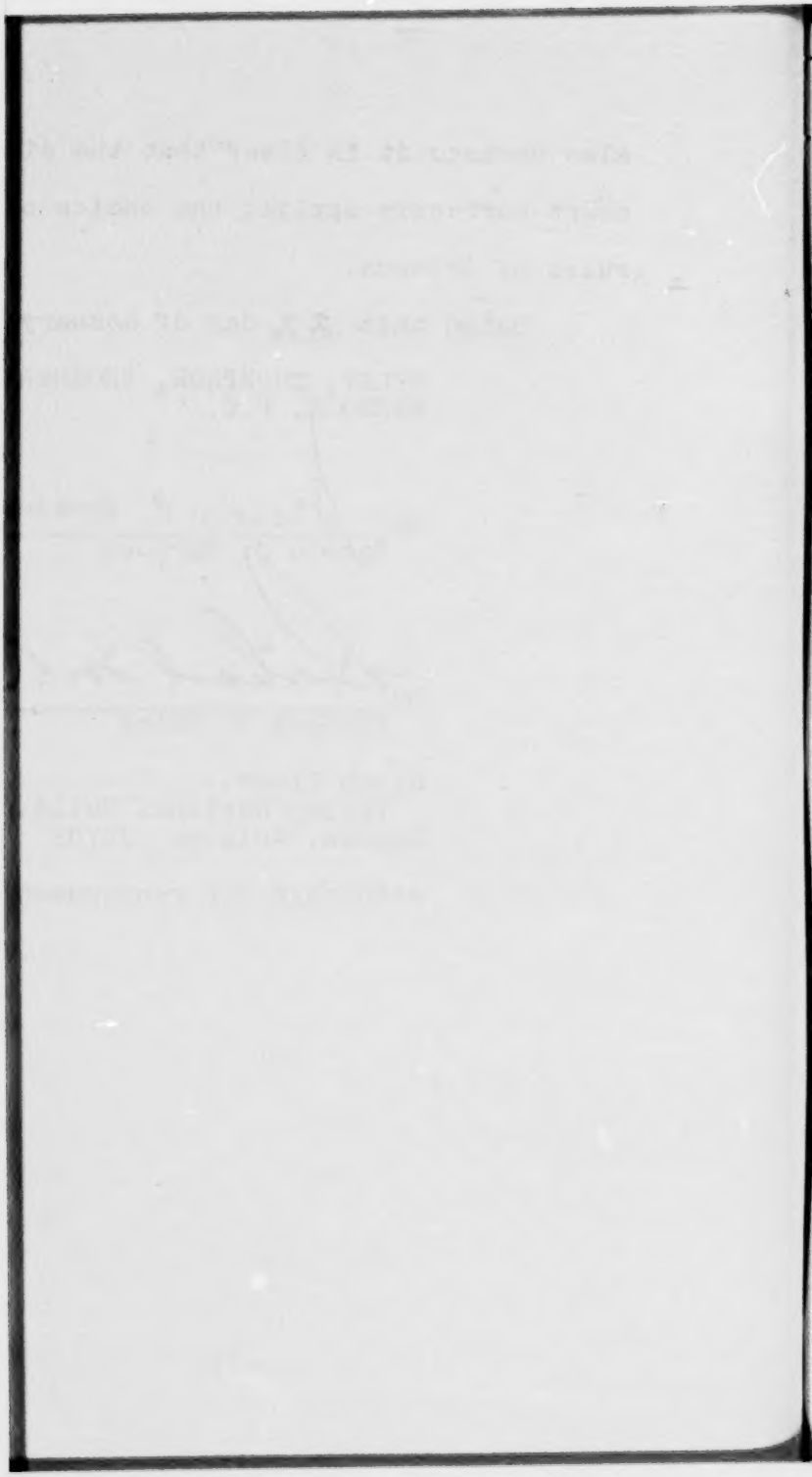

CERTIFICATE OF SERVICE

HAROLD C. WARNOCK, one of the attorneys for the respondent herein, does hereby certify in accordance with Rule 33(3)(b) of the Supreme Court Rules, that he did, on the 22 day of January, 1976, cause to be deposited in the United States Post Office at Tucson, Arizona, the following:

RESPONDENT'S BRIEF IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI,

that three (3) copies of the said respondent's brief in opposition to the petition for writ of certiorari were placed in an envelope addressed to:

Jon L. Kyl
JENNINGS, STROUSS & SALMON
111 West Monroe
Phoenix, Arizona 85003
Attorneys for petitioners,

that the necessary postage was prepaid, and that all parties required to be served have been served.

Harold C. Warnock

Harold C. Warnock

APPENDIX

Office of the Clerk
United States Court of Appeals for the Ninth Circuit
U. S. Court of Appeals and Post Office Building
7th & Mission Streets, P. O. Box 547
San Francisco, California 94101

September 17, 1975

73-2194 BETA SPEARS, ETC. ET AL vs. SOUTHERN PACIFIC TRANSPORTATION COMPANY

Dear Sir:

An opinion in the above case was filed today, and pursuant to Rule 36 of the Federal Rules of Appellate Procedure a judgment was entered

September 17, 1975 AFFIRMING

the judgment or order of the court below (or administrative agency).

Pursuant to Rule 41(a) the mandate of this court will issue 21 days after the entry of judgment, unless the court enters an order otherwise, or grants a stay of the mandate or a petition for rehearing is filed. If a petition for rehearing is filed and denied, the mandate shall issue 7 days after the entry of the order denying the petition.

Very truly yours,

Phil M. Wolfi, Jr.
Dennis R. Mathews Clerk
U.S. Court of Appeals